

No. 10065

United States

Circuit Court of Appeals

For the Ninth Circuit.

JOHN KONG YEUNG,

Appellant,

vs.

TERRITORY OF HAWAII,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Territory of Hawaii.

FILED

MAY 11 1942

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF
ATTORNEYS OF RECORD

For the Plaintiff, Territory of Hawaii

CHARLES E. CASSIDY, Esq.,
Prosecutor, City and County of Honolulu,
City Hall,
Honolulu, T. H.

For the Defendant, John Kong Yeung

Mr. PHILIP SILVER
of the firm Cass & Silver,
101-103 Rice Building,
227 S. King Street,
Honolulu, T. H. [1*]

In the Circuit Court of the First Judicial Circuit
Territory of Hawaii

CLERK'S MINUTES [5]

At Term: Tuesday, October 7, 1941 2:00 P. M.

Present: Hon. John Albert Matthewman, Fifth
Judge presiding

M. N. Olds, Clerk

C. Cowart, Reporter

Counsel: C. Cassidy, Esq., Public Prosecutor

J. V. Esposito, Esq., for the Defendant

CONTINUANCE

Mr. Esposito requested a continuance of the matter of plea until Friday, October 10, 1941, arguing that he desired to make further study on the question of having the above entitled cause removed to the Federal District Court of Hawaii for trial, and that he did not wish to enter a plea at this time for fear that he thereby might jeopardize the defendant's right of having the above entitled cause removed to the Federal District Court of Hawaii.

2:07 p. m. Mr. Cassidy argued against the granting of the continuance reminding the Court of the witnesses who were being delayed in Honolulu awaiting the trial of the above entitled cause. Mr. Cassidy further asked that said cause be set for trial on Tuesday, October 14, 1941 at 9:00 a. m.

2:12 p. m. Mr. Esposito objected to Mr. Cassidy's request.

2:13 p. m. the Court ordered the matter of plea set for Friday, October 10, 1941 at 2:00 p. m., and upon a plea of not guilty being entered on that day, the Court further ordered that setting of the above entitled cause for trial would also take place at the same time.

By Order of the Court:

(Sgd.) M. N. OLDS

Clerk

At Term: Friday, October 10, 1941 2:30 P. M.

Present: Hon. John Albert Matthewman, Fifth

Judge presiding

R. P. Whitmarsh, Clerk

G. Clark, Reporter

Counsel: C. Cassidy, Esq., Public Prosecutor

J. V. Esposito, Esq., for the Defendant

TRANSFER OF CAUSE TO FEDERAL COURT

Mr. Esposito addressed the Court, stating that a document had been filed in this Court for the transfer of the above entitled cause to the Federal District Court of Hawaii.

Mr. Cassidy stated that this Court had lost jurisdiction of the above entitled cause.

Upon the showing made by counsel, the Court ruled that it had no jurisdiction over the cause, and ordered the case taken off the calendar.

By Order of the Court:

(Sgd.) R. P. WHITMARSH

Clerk [6]

C. N. 16525

Murder in the Second Degree

TERRITORY OF HAWAII

vs.

JOHN KONG YEUNG,

Defendant.

At Term: Thursday, October 2, 1941 3:05 P. M.

Present: Hon. John Albert Matthewman, Fifth

Judge presiding

M. N. Olds, Clerk

R. N. Linn, Reporter

Counsel: C. Cassidy, Esq., Public Prosecutor

TRUE BILL

The Grand Jury having returned a true bill in the above entitled cause, the Court ordered that arraignment be set for 2:00 o'clock p. m., Friday, October 3, 1941.

By Order of the Court:

(Sgd.) M. N. OLDS

Clerk

At Term: Friday, October 3, 1941 2:12 P. M.

Present: Hon. John Albert Matthewman, Fifth
Judge presiding
M. N. Olds, Clerk
G. Clark, Reporter

Counsel: C. Cassidy, Esq., Public Prosecutor

ARRAIGNMENT

J. V. Esposito, Esq., entered his name as counsel for the above named defendant, and asked that the matter of plea be continued for one week.

Mr. Cassidy furnished counsel for the defendant with a copy of the indictment. Mr. Esposito waived the reading of the indictment.

Mr. Cassidy objected to the continuance of the matter of plea for one week, stating that certain material witnesses who were in the employ of the Federal Government were being delayed in Honolulu for trial of the above entitled cause, and that said delay was causing these witnesses undue hardship.

Mr. Esposito renewed his request, and Mr. Cassidy then asked that the matter of plea be continued until Tuesday, October 7, 1941 at 2:00 P. M.

The Court thereupon ordered the matter of plea continued until Tuesday, October 7, 1941 at 2:00 p. m.

By Order of the Court:

(Sgd.) M. N. OLDS

Clerk [7]

In the Circuit Court of the First Judicial Circuit
Territory of Hawaii

Cr. No. 16525

January Term 1941

THE TERRITORY OF HAWAII

vs.

JOHN KONG YEUNG,

Defendant.

INDICTMENT FOR MURDER
IN THE SECOND DEGREE

The Grand Jury of the First Judicial Circuit of the Territory of Hawaii do present that John Kong Yeung, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on the 22nd day of September, 1941, with force and arms, unlawfully, feloniously, wilfully, and of his malice aforethought, and without authority and without justification and without extenuation by law, in and upon one Martin R. Connelly, a human being then and there being, a felonious assault did make; and that he, the said John Kong Yeung, with a certain pistol loaded with gunpowder and bullets, which he, the said John Kong Yeung, in his hand then and there had and held, at and against the body of him, the said Martin R. Connelly, unlawfully, feloniously, wilfully, and of his malice aforethought, and without authority and without justification and without extenua-

tion by law, did shoot off and discharge; and the said John Kong Yeung, with the pistol aforesaid, by the shooting and discharging aforesaid, did then and there give to him, the said Martin R. Connelly, a certain mortal wound of which said mortal wound the said Martin R. Connelly did, on the said 22nd day of September, 1941, die; and [11] that so in manner and form aforesaid, and at the time and place aforesaid, the said John Kong Yeung unlawfully, feloniously, wilfully, and of his malice aforethought, and without authority and without justification and without extenuation by law, did kill and murder the said Martin R. Connelly, and did then and there and thereby commit the crime of murder in the second degree, contrary to the form of the statute in such case made and provided.

A true bill found this 2nd day of October, 1941.

/s/ DANIEL F. McCORRISTON

Foreman of the Grand Jury

/s/ CHAS. E. CASSIDY

Public Prosecutor of the City
and County of Honolulu [12]

Indictment Presented and Filed at 3:05 o'clock
P. M. October 2, 1941.

/s/ M. N. OLDS

Clerk. [10]

In the United States District Court for the
Territory of Hawaii

April Term—1941

In the Matter of the Petition of

JOHN KONG YEUNG

For the Removal of the Criminal Prosecution entitled "The Territory of Hawaii vs. John Kong Yeung, Defendant".

PETITION FOR REMOVAL OF CAUSE

To: The Honorable Judges of the District Court of
the United States for the Territory of Hawaii:

The petition of John Kong Yeung, the defendant
above named, respectfully shows:

I.

That Petitioner, John Kong Yeung, is the defendant in a criminal prosecution, instituted by Indictment in the Circuit Court of the First Judicial Circuit Court of the First Judicial Circuit, Territory of Hawaii, January Term 1941, charging Murder in the Second Degree, and entitled "The Territory of Hawaii, Plaintiff vs. John Kong Yeung, Defendant, filed in the office of the Clerk of the said Court on the 2nd day of October, 1941, in the said court and cause.

II.

That said criminal prosecution aforesaid at the instance of Charles E. Cassidy, Public Prosecutor

of the City and County of Honolulu, Territory of Hawaii, on the 2nd day of October, 1941, the Grand Jury of the First Judicial Circuit of the Territory of Hawaii found a true Bill and indicted your petitioner as follows: [14]

“In the Circuit Court of the First Judicial
Circuit, Territory of Hawaii

January Term 1941

Murder in the Second Degree

THE TERRITORY OF HAWAII

vs.

JOHN KONG YEUNG,

Defendant.

INDICTMENT

The Grand Jury of the First Judicial Circuit of the Territory of Hawaii do present that John Kong Yeung, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on the 22nd day of September, 1941, with force and arms, unlawfully, feloniously, wilfully, and of his malice aforethought, and without authority and without justification and without extenuation by law, in and upon one Martin R. Connelly, a human being then and there being, a felonious assault did make; and that he, the said John Kong Yeung, with a certain pistol loaded with gunpowder and bullets, which he, the said John

Kong Yeung, in his hand then and there had and held, at and against the body of him, the said Martin R. Connelly, unlawfully, feloniously, wilfully, and of his malice aforethought, and without authority and without justification and without extenuation by law did shoot off and discharge; and the said John Kong Yeung, with the pistol aforesaid, by the shooting and discharging aforesaid, did then and there give to him, the said Martin R. Connelly, a certain mortal wound of which said mortal wound the said Martin R. Connelly did, on the said 22nd day of September, 1941, die; and that so in manner and form aforesaid, and at the time and place aforesaid, the said John Kong Yeung unlawfully, feloniously, wilfully and of his malice aforethought, and without authority and without [15] justification and without extenuation by law, did kill and murder the said Martin R. Connelly, and did then and there and thereby commit the crime of murder in the second degree, contrary to the form of the statute in such case made and provided.

A true bill found this 2nd day of October, 1941.

DANIEL F. MCCORRISTON

Foreman of the Grand Jury.

CHAS. E. CASSIDY

Public Prosecutor of the City
and County of Honolulu.”

III.

That said indictment and criminal prosecution so instituted against the petitioner is still pending and no trial nor final hearing thereof has as yet taken place, in said Circuit Court of the First Judicial Circuit, City and County of Honolulu, Territory of Hawaii, as aforesaid, though filed with the Clerk of said Court.

IV.

That the above criminal prosecution and indictment against your petitioner for the crime of murder in the second degree is based on the following facts:

That on the 22nd day of September, 1941, and for many years prior thereto, and at all times herein-after mentioned, your petitioner was and now is a duly appointed, qualified and acting officer, guard and employee of the Bureau of Customs, United States Treasury Department of the United States of America; that as such officer, agent and customs guard of said Bureau of Customs, it was, and at all times still is, the duty of petitioner to investigate and report violations of the Tariff Act, Bureau of Customs, United States Treasury Department, and its rules and regulations for the protection of the Revenue of the United States, and further to guard and inspect merchandise in customs custody and to prevent the illegal or irregular landing or delivery of imported merchandise or persons and/or packages in the Territory of Hawaii. [16]

V.

That at said time, date and place in said City and County of Honolulu and at all times herein mentioned, your petitioner was on guard by virtue of his appointment as such customs guard, dressed in his coat, hat and badge and complete official uniform of such customs guard as prescribed by the laws and regulations of the Bureau of Customs, United States Treasury Department, in the performance of his duties as authorized and assigned by his superior officer, the United States Collector of Customs for the Territory of Hawaii, or his deputy and/or duly appointed officer on Pier 8, whereat the S. S. Cleveland a vessel or vehicle was docked and fastened to said Pier 8, discharging passengers, merchandise and packages; further that at said time and place your petitioner in the performance of his duties as such customs guard was authorized to stop and search and arrest any person or vehicle leaving the said vessel, and the said Pier 8, and to open and examine packages in the possessions of such persons; and further that your petitioner was and is authorized to make seizures of any merchandise or package which has been illegally landed from said vessel, or vehicle or taken from said Pier or warehouse without a permit therefore, in the protection and administration of the Tariff Act and the rules and regulations of the Bureau of Customs and the Secretary of the United States Treasury Department.

VI.

That at said time and place and at all times herein mentioned, Martin R. Connelly, a human being then and there being, was a passenger on the said vessel, the S. S. Cleveland, docked at said Pier 8, and was leaving said vessel and said Pier 8 with a package on his person without a permit for the same, that your petitioner in the performance of his duties as said customs guard while on guard duty as aforesaid, was lawfully searching the person of said Martin R. Connelly, and was lawfully opening and examining the said package in the possession of said Martin R. Connelly as aforesaid. [17]

VII.

That your petitioner further alleges that at said time and place no murder was committed as alleged in the aforesaid indictment, and that your petitioner is not guilty of the crime alleged in said indictment. Further that your petitioner is not guilty of any crime or offense whatsoever against the Territory of Hawaii, but on the other hand your petitioner alleges that said death occurred on said date, time and place, in the accidental firing and discharging of said pistol aforesaid in the necessary self defense of your petitioner, while your petitioner was lawfully engaged in the discharge and performance of his duty, as a customs officer, guard and employee of the Collector of Customs, Treasury Department of the United States of America, for the Territory of Hawaii.

VIII.

That your petitioner after a personal arrest was ordered upon the said indictment and criminal prosecution, is now out of prison and on bail, upon proper bond and security furnished by him.

Wherefore, Your Petitioner prays this Court as follows:

To order the said cause removed for trial to the District Court of the United States for the Territory of Hawaii next to be holden in said district where the said cause is now pending, from the said Circuit Court of the First Judicial Circuit, Territory of Hawaii, January Term 1941 aforesaid.

That a Writ of Habeas Corpus cum causa may be awarded and a duplicate thereof be delivered to the Clerk of the Circuit Court of the First Judicial Circuit, City and County of Honolulu, Territory of Hawaii, and that by virtue thereof the Marshal of said district or one of his deputies may take the body of the petitioner into his custody to be dealt with in the cause, according to law, and according to the order of the District Court, or of a judge thereof in vacation;

That the records and proceedings heretofore had in said cause, in said Circuit Court of the First Judicial Circuit, Territory of Hawaii, [18] be removed and transmitted to this court, the United States District Court for the Territory of Hawaii, and thereupon proceed as a cause originally commenced herein, pursuant to the Statute of the United States in such case made and provided; United

States Compiled Statute, Section 1015, being Judicial Code Section 33 as Amended by Act 23, 1916 C. 399; Section 76, Title 28 United States Code Annotated.

Dated: Honolulu, Territory of Hawaii, this 10th day of October, 1941.

JOHN KONG YEUNG

Petitioner

United States of America,
District and Territory of Hawaii—ss.

John Kong Yeung, being first duly sworn, on oath, deposes and says: That he is the Petitioner named herein; that he has read the above and foregoing Petition and knows the contents thereof and that the same is true except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

JOHN KONG YEUNG

Petitioner

Subscribed and sworn to before me this 10th day of October, 1941.

[Seal]

HATTIE PANG LEE

Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission expires on June 30, 1945.

I, J. V. Esposito, do certify that I am an Attorney and counselor-at-law of all the courts of the Territory of Hawaii, and of the United States District Court for the Territory of Hawaii, and of the United States Circuit Court of Appeals for the Ninth Circuit; that as counsel for the Petitioner above named, I have examined the proceedings against him and carefully inquired into all matters set forth in the Petition; and that the same is true to the best of my knowledge, information and belief.

Dated: Honolulu, Territory of Hawaii, this 10th day of October, 1941.

J. V. ESPOSITO

Attorney for Petitioner.

[Endorsed]: Filed Oct. 10, 1941. [19]

In the United States District Court for the
Territory of Hawaii

April Term—1941

In the Matter of the Petition of

JOHN KONG YEUNG,

For the Removal of the Criminal Prosecution entitled "The Territory of Hawaii vs. John Kong Yeung, Defendant".

ORDER FOR REMOVAL AND ORDER OF
WRIT OF HABEAS CORPUS CUM CAUSA

This cause coming on to be heard on the petition of John Kong Yeung, defendant in the above enti-

tled suit and cause, for the removal of the said cause from the Circuit Court of the First Judicial Circuit, City and County of Honolulu, Territory of Hawaii, to this court in the United States District Court for the Territory of Hawaii, it is,

Ordered that said suit and cause be removed into this court for trial, and that a Writ of Habeas Corpus cum causa be issued herein, by the Clerk of this Court, directed to the Circuit Court of the First Judicial Circuit, Territory of Hawaii, its clerk and officers and other custodians of the records of said court, to transmit the records and proceedings in the above entitled cause to this Court on Monday, October 13, 1941, at 10 A. M.; and that the Marshall of the United States for the District of the Territory of Hawaii take the body of the defendant, your petitioner, into his custody to be dealt with in the said cause, according to law and the order of this Court.

Dated: Honolulu, T. H., this 10th day of October, 1941.

INGRAM M. STAINBACK

Judge, United States District
Court, Territory of Hawaii.

[Endorsed]: Filed Oct. 10, 1941. [21]

In the United States District Court for the
Territory of Hawaii.

April Term—1941

H. C. No. 293

In the Matter of the Petition of

JOHN KONG YEUNG,

For the Removal of the Criminal Prosecution entitled "The Territory of Hawaii vs. John Kong Yeung, Defendant".

WRIT OF HABEAS CORPUS CUM CAUSA
[22]

United States of America,
District of Hawaii—ss.

The President of the United States of America to
the Circuit Court of the First Judicial Circuit,
Territory of Hawaii, to the Clerk of the Circuit
Court of the First Judicial Circuit, Territory
of Hawaii; to the Marshal of the United States
for the District of the Territory of Hawaii,

Greeting:

You are commanded to make known to the Circuit Court of the First Judicial Circuit, Territory of Hawaii and to the Clerk of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, that whereas the defendant, John Kong Yeung, and now petitioner in this Writ has filed his petition before the undersigned, setting forth that a bill of indict-

ment was returned into the Circuit Court of the First Judicial Circuit, Territory of Hawaii, by the Grand Jury at the January Term, 1941 of said Court, charging said defendant with the offense of Murder in the Second Degree, upon the person of one Martin R. Connelly, and whereas, the said defendant showeth in his said petition that at the time of the alleged offense he was a customs guard, officer and employee of the Bureau of Customs, United States Treasury Department, for the District and Territory of Hawaii, and being a customs guard, officer and employee of the said Bureau of Customs, United States Treasury Department, for the District and Territory of Hawaii, was acting by his authority and by virtue of such appointment and authority was an actor in the aforesaid accidental death complained of.

And whereas, he has demanded in his said petition the removal of the aforesaid indictment into the District Court of the United States for the District and Territory of Hawaii, under section 33 of the Judicial Code of the United States.

Now, therefore, you are commanded to make known to the said Circuit Court of the First Judicial Circuit, Territory of Hawaii, by [23] the delivery of a copy hereof to the clerk of said court or by leaving it at his office, that the said cause is hereby removed for trial into the said District Court of the United States for the District and Territory of Hawaii, next to be holden for the said district

at the City and County of Honolulu, Territory of Hawaii, on the 13th day of October, 1941.

And that it is entered on the docket of said District Court of the United States for the Territory of Hawaii, and will be proceeded with as a cause originally commenced in said court; and further that it is required of said Circuit Court of the First Judicial Circuit, Territory of Hawaii, to send and transmit to the said District Court of the United States for the Territory of Hawaii, distinct and plainly under the seal of said Circuit Court of the First Judicial Circuit, Territory of Hawaii, a transcript of the record and proceedings in said cause in that case in that court with all the things touching the same by whatever name the party may be called so that we may have him before the judges of the said District Court of the United States for the Territory of Hawaii, at the time and place aforesaid, to-wit, at Honolulu, T. H., on the 13th day of October, 1941 at 10 a. m.; and further to do, therefore, what of right we shall see fit to be done.

Herein fail not and have you then and there this writ.

Witness, the Honorable Ingram M. Stainback, Judge of the United States *District for* the Territory of Hawaii, in the City and County of Honolulu, District and Territory of Hawaii, and the seal of said Court this 10th day of October, 1941.

WM. F. THOMPSON, JR.

Clerk, United States District
Court for the Territory of
Hawaii. [24]

UNITED STATES MARSHAL'S RETURN

Received the within Writ of Habeas Corpus Cum Causa this 10th. day of October, A. D. 1941 and the same is returned duly executed this 10th. day of October, A. D. 1941 by delivering to and leaving with James K. Trask, Deputy Clerk of Circuit Court, First Judicial Circuit, at Honolulu, Territory of Hawaii a certified copy of the original Writ at 12:09 p. m.

OTTO F. HEINE

U. S. Marshal

District of Hawaii. [24-A]

In the United States District Court for the
Territory of Hawaii

April Term—1941

Habeas Corpus

No. 293

In the Matter of the Petition of

JOHN KONG YEUNG,

For the Removal of the Criminal Prosecution entitled "The Territory of Hawaii vs. John Kong Yeung, Defendant".

MOTION TO QUASH

To: The Honorable Judges of the District Court of
the United States for the Territory of Hawaii:
Comes now the Territory of Hawaii, appearing

specially for the purpose of this motion by Chas. E. Cassidy, Public Prosecutor of the City and County of Honolulu, and moves that the Writ of Habeas Corpus Cum Causa issued out of and by this Court in the above entitled cause on the 10th day of October, 1941, be quashed and held for naught, and for grounds thereof your movant respectfully shows and avers:

I.

That the facts set forth in the petition of the above named John Kong Yeung for said writ are insufficient to give this Court jurisdiction over the cause sought by said petition to be removed to this Court.

II.

That the said petition fails to disclose sufficient facts to enable this Court to determine whether the cause covered by said petition is one which may be removed to this Court.

III.

That said petition is vague, indefinite and uncertain.

IV.

That said petition is insufficient and incomplete in that the same fails to candidly, specifically and positively disclose and explain [26] the petitioner's relation to the transaction covered by and set forth in the indictment returned by the Grand Jury of the First Judicial Circuit of the Territory of Hawaii charging the said John Kong Yeung with murder in the second degree.

Wherefore it is prayed that the said Writ of Habeas Corpus Cum Causa be quashed and that the said cause of the Territory of Hawaii v. John Kong Yeung be remanded to the Circuit Court of the First Judicial Circuit of the Territory of Hawaii.

Dated at Honolulu, T. H., this 11th day of October, A. D. 1941.

TERRITORY OF HAWAII

By CHAS. E. CASSIDY

Public Prosecutor of the City
and County of Honolulu

NOTICE

To: J. V. Esposito, Esq.,
Attorney for John Kong Yeung,
Petitioner.

You will please take notice that the foregoing Motion will be presented for hearing and argument before the Honorable Ingram M. Stainback, Judge of the above entitled Court, in his courtroom in the Federal Building, Honolulu, Territory of Hawaii, on the 13th day of October, 1941, at 10 o'clock A. M. or as soon thereafter as counsel may be heard.

Dated at Honolulu, T. H., this 11th day of October, A. D. 1941.

CHAS. E. CASSIDY

Public Prosecutor of the City and
County of Honolulu.

Attorney for Territory of Hawaii

Receipt of a copy of the above and Motion to Quash is hereby acknowledged this 11th day of October A. D. 1941.

J. V. ESPOSITO

By H. LEE

Attorney for Petitioner

[Endorsed]: Filed Oct. 11, 1941. [27]

In the United States District Court for the
Territory of Hawaii

April Term—1941

In the Matter of the Petition of

JOHN KONG YEUNG,

For the Removal of the Criminal Prosecution entitled "The Territory of Hawaii vs. John Kong Yeung, Defendant".

AMENDED PETITION FOR REMOVAL
OF CAUSE

To: The Honorable Judges of the District Court of
the United States for the Territory of Hawaii:

The amended petition of John Kong Yeung, the defendant above named, respectfully shows:

I.

That Petitioner, John Kong Yeung, is the defendant in a criminal prosecution, instituted by Indict-

ment in the Circuit Court of the First Judicial Circuit *Court of the First Judicial Circuit*, Territory of Hawaii, January Term 1941, charging Murder in the Second Degree, and entitled "The Territory of Hawaii, Plaintiff vs. John Kong Yeung, Defendant, filed in the office of the Clerk of the said Court on the 2nd day of October, 1941, in the said court and cause.

II.

That said criminal prosecution aforesaid at the instance of Charles E. Cassidy, Public Prosecutor of the City and County of Honolulu, Territory of Hawaii, on the 2nd day of October, 1941, the Grand Jury of the First Judicial Circuit of the Territory of Hawaii found a true Bill and indicted your petitioner as follows: [29]

"In the Circuit Court of the First Judicial
Circuit, Territory of Hawaii
January Term 1941
Murder in the Second Degree

THE TERRITORY OF HAWAII

vs.

JOHN KONG YEUNG,

Defendant.

INDICTMENT

The Grand Jury of the First Judicial Circuit of the Territory of Hawaii do present that John

Kong Yeung, at the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Honorable Court, on the 22nd day of September, 1941, with force and arms, unlawfully, feloniously, wilfully, and of his malice aforethought, and without authority and without justification and without extenuation by law, in and upon one Martin R. Connelly, a human being then and there being, a felonious assault did make; and that he, the said John Kong Yeung, with a certain pistol loaded with gunpowder and bullets, which he, the said John Kong Yeung, in his hand then and there had and held, at and against the body of him, the said Martin R. Connelly, unlawfully, feloniously, wilfully, and of his malice aforethought, and without authority and without justification and without extenuation by law, did shoot off and discharge; and the said John Kong Yeung, with the pistol aforesaid, by the shooting and discharging aforesaid, did then and there give to him, the said Martin R. Connelly, a certain mortal wound of which said mortal wound the said Martin R. Connelly did, on the 22nd day of September, 1941, die; and that so in manner and form aforesaid, and at the time and place aforesaid, the said John Kong Yeung unlawfully, feloniously; wilfully, and of his malice aforethought, and without authority and without justification and without extenuation by law, did kill and murder the said Martin R. Con-

nelly, and did then and there and thereby commit the crime of murder in the second degree, [30] contrary to the form of the statute in such case made and provided.

A true bill found this 2nd day of October, 1941.

DANIEL F. McCORRISTON

Foreman of the Grand Jury.

CHAS. E. CASSIDY

Public Prosecutor of the City
and County of Honolulu.”

III.

That said Indictment and criminal prosecution so instituted against the petitioner is still pending and no trial nor final hearing thereof has as yet taken place, in said Circuit Court of the First Judicial Circuit, City and County of Honolulu, Territory of Hawaii, as aforesaid, though filed with the Clerk of said Court.

IV.

That the above criminal prosecution and indictment against your petitioner for the crime of murder in the second degree is based on the following facts:

That on the 26th day of November, 1926, the petitioner was duly appointed by the Secretary of Treasury, of the United States of America, by his duly authorized officers, and then and there duly qualified on oath as a federal officer, employee and customs guard of the Bureau of Customs, Treasury

Department, United States of America, for the Territory of Hawaii, at the City and County of Honolulu; that from said date and place, up to and including the date of this amended petition, your petitioner has been continuously employed and engaged as such duly appointed and qualified federal officer, employee and customs guard, as aforesaid, of the Bureau of Customs, United States Treasury Department.

V.

That the Customs Guard duties as made and provided by the Tariff Act of 1930, Sec. 581; Article 1381 of Customs Regulation 1937, Treasury Department, United States of America, in force at said time and place are as follows: [31]

“Art. 1381. Duties generally.—(a) Customs guards are appointed to guard merchandise in customs custody and to prevent the illegal or irregular landing or delivery of imported merchandise. They are required to remain on duty until the arrival of the relief guard or until permitted to depart by a superior officer. They must keep a vigilant watch over the vessel, vehicle, stores, or pier to which assigned and prevent the landing or removal of merchandise in the absence of the customs officer in charge.

(b) Customs guards will not interfere with a vessel taking on coal, ballast, or cargo not in bond at night or at other times in the absence of an inspector, provided a permit therefor is exhibited.

(c) Customs guards in the performance of their duties are authorized to stop and search any person or vehicle leaving a vessel or pier to which they are assigned and to open and examine packages in the possession of such persons. Searches of persons should be made, if practicable, in the presence of another officer or person. They also have authority to arrest any person detected in the act of smuggling and to call for the assistance of the police or of any person to aid them in so doing. They are also authorized to make seizures of any merchandise which has been illegally landed from any vessel or vehicle or taken from a pier or warehouse without a permit therefor." (Tariff Act of 1930, sec. 581)

VI.

That on the 21st day of September, 1941, in the City and County of Honolulu, Territory of Hawaii, from 11:00 P. M. of said day to 7:00 A. M. of the 22nd day of September, 1941, and at all times herein mentioned, your petitioner was assigned, by his immediate superior officer, Inspector George Roberts, in charge of said Customs Guard Service, as such duly appointed, qualified and acting federal officer, employee and customs guard, to the duty of a customs guard on and at Pier 8, whereat the S. S. Cleveland, a vessel, was docked and fastened to said Pier 8, discharging foreign cargo, goods, wares and merchandise, passengers with baggage and packages

in their possession at the Port of Honolulu, City and County of Honolulu, Territory of Hawaii.

VII.

That on the 22nd day of September, 1941, at or about 1:00 A. M., at said Pier 8, in said Honolulu, the petitioner, while in the performance of his official duties as such customs guard, as aforesaid, [32] was lawfully assigned and stationed on customs guard duty, standing beside a table within the baggage and passenger enclosure of said Pier 8, about forty to fifty feet away from said vessel at dock, guarding and watching the pass-gate proper and passenger exit, investigating, inspecting and examining persons, goods, wares and merchandise leaving the said vessel and said Pier 8; further that at said time and place, the petitioner in the performance of his official duties as such customs guard, was authorized to stop, search and/or arrest any person leaving said vessel and Pier, contrary to the laws of the United States, as made and provided in such cases; and further, your petitioner was authorized to open, examine, search and make seizures of any goods, wares and merchandise or package, which had been illegally landed from said vessel, or taken and carried from said Pier 8 or warehouse without a proper permit, or without inspection or examination by a duly authorized officer, agent or employee of the said Customs Service as aforesaid.

VIII.

That at said time and place, and at all times herein mentioned, your petitioner as such federal officer and Customs guard, in the service of customs, while engaged in the performance of his official duties, and/or, on account of the performance of his official duties, was dressed and wore the complete official uniform as prescribed by the rules and regulations of Customs Regulations of the year 1937, Treasury Department, United States of America, as made and provided by Article 1326 of said Customs Regulation: to-wit, regulation cap with metal emblem of "U. S. Customs Guard". Regulation uniform of coat, and trousers with Regulation metal custom's badge conspicuously displayed on the left side of said coat, bearing the following insignia, U.S. Customs Guard, Treasury Department, No. 2765.

[33]

IX.

That your petitioner, at all times herein mentioned, carried firearms, to-wit: a Regulation Colt Pistol, No. 38, at his belt and holster, conspicuously displayed, while in the performance of his official duties, within the scope of his employment as herein mentioned as made and provided by laws and regulations to wit: Article 1125 of Customs Regulation of the year 1937, Treasury Department, United States of America.

That your petitioner, for a long time prior to the said 22nd day of September, and at all times herein mentioned, had been thoroughly instructed in the

proper care and use of said weapon and regulation pistol Colt No. 38. That your petitioner alleges that the said firearms and Regulation Colt Pistol No. 38 had been and is repeatedly and periodically examined and inspected by his superior officer and that said firearms and pistol as aforesaid was kept by your petitioner in first class condition for proper use.

X.

That at said time and place, Martin R. Connelly, a human being then and there being, was a passenger on the vessel, S. S. Cleveland docked at said Pier 8, and was leaving said vessel and said Pier 8, with a package on his person and in his possession without a proper permit for the same, and upon his approach to and arrival near, the pass-gate proper, and passenger exit, within the said baggage and passenger enclosure fenced in, at said Pier 8, where your petitioner was duly stationed near said table, in the performance of his official duties, the said Martin R. Connelly attempted to leave said Pier 8, by passing through the said pass-gate proper without inspection or examination of the said package he was carrying, whereupon your Petitioner, on guard at said pass-gate politely informed said Martin R. Connelly to place said package on the table, and open it, so that your petitioner [34] could inspect and examine it for customs duty, if any, as such customs guard. The said Martin R. Connelly refused to open the said package for the inspection of your petitioner and thereby slammed the said pack-

age with great force on said table. Your petitioner thereupon informed the said Martin R. Connelly—that if he refused to open said package for inspection of the customs guard, he would have to return said package to the ship or words to that effect. Your petitioner thereafter, in the performance of his official duties as such customs guard, attended to other official business of passengers and persons passing and repassing said entrance and exit gates fenced off at said Pier 8, near the docked vessel at the proper enclosure assigned and allotted the Customs Service as made and provided by rules and regulations; when without warning or any notice whatsoever, the said Martin R. Connelly attempted to forcibly push his way with said package through said exit gate, and thereby leave said Pier 8, without inspection or examination of said package, all contrary to rules and regulations as made and provided; that your Petitioner quickly stepped in said passage way and blocked the exit opening and thereby prevented the escape of said Martin R. Connelly, with said package, and again your petitioner politely and properly informed him “You can’t take it out unless you open it”, meaning thereby, the said package in the possession of said Martin R. Connelly; that the said Martin R. Connelly replied to your petitioner, “You open it”, and thereupon the petitioner said, “You insist, I open it”, and proceeded thereupon to open, inspect and examine said package and upon finding no contraband, declared the said package “all right”.

Thereupon, the said Martin R. Connelly, placing both of his hands on his chest, requested and invited your petitioner to examine and search his person for any contraband, and smuggled goods, wares and merchandise; that your petitioner, upon the request of the said Martin R. Connelly, replied as follows:—"if you insist, I will search you", and immediately your petitioner began a proper and careful search of the person of said Martin R. Connelly, [35] as requested, and formally and gently frisked the clothing of said Martin R. Connelly, in the lawful performance of his official duties, and on account of the lawful performance of his duty, under color of office and within the scope of his employment and not without the scope of said employment, when suddenly and without warning or notice of any kind whatsoever, and without reason, cause or provocation upon the part of the petitioner in the premises, the said Martin R. Connelly, forcibly, unlawfully and with great violence, struck your petitioner upon the jaw and face, with his closed hand and clenched fist, with terrific force and power, severely and painfully injuring your petitioner, and as a direct result of the force of said blow, your petitioner was momentarily dazed and confused, and pushed backward and away from said Martin R. Connelly; that immediately your petitioner shouted from pain, exclaiming "You hit me"—meaning the said Martin R. Connelly was under arrest, and thereupon drew his said Regulation pistol and firearm from his said belt and

holster and pointed the same at the said Martin R. Connelly. That your petitioner at said time and place, was acting with the lawful intent and purpose of placing the said Martin R. Connelly under lawful arrest, for the commission of a felony, to-wit; for knowingly and forcibly resisting, opposing, impeding, intimidating or interfering with your petitioner, a federal officer, employee, agent or other person in the service of the customs as designated in Section 253 of Title 18, United States Code Annotated, while your petitioner was engaged in the performance of his duties, and/or knowingly and forcibly assaulting and attacking your petitioner on account of the performance of his official duties as herein alleged, all contrary to law as made and provided by Section 254 of Title 18, United States Code Annotated;

secondly; your petitioner acted as aforesaid, with the lawful intent and purpose of preventing the said Martin R. Connelly from the commission of a further and another felony, as prohibited by Sections 253-254 of said [36] Title 18, United States Code Annotated;

thirdly; that your petitioner acted as aforesaid, because of the unlawful acts, threats and conduct of said Martin R. Connelly as aforesaid, your petitioner was put in fear of bodily harm and his life being in danger, under and upon the premises and allegations as herein alleged, and your petitioner reasonably acted in the necessary preservation of his life, and in his necessary self-defense.

XI.

That immediately thereafter or almost concurrently with the act of your petitioner in the drawing and the pointing of his said pistol as aforesaid, and in the utterance of your petitioner as aforesaid, "You hit me"—"You are under arrest"—the petitioner meaning the said Martin R. Connelly, and later the said Martin R. Connelly as aforesaid then and there, at said time and place, the said Martin R. Connelly, again and again violently and furiously struck and forcibly and unlawfully attacked your petitioner, in a ferocious and malicious manner and did beat and strike your petitioner upon his face and head, so suddenly with both of his clenched hands and closed fists, causing and inflicting excruciating pain and great bodily injury and thereby jeopardizing and endangering the life of your petitioner, that as a direct and proximate result and consequence of the acts, conduct, threats and attack of the said Martin R. Connelly as aforesaid upon your petitioner as aforesaid, your petitioner was hurled backward and was staggered and his mind became confused and blank and not under the control of his will and faculty.

XII.

That some time thereafter, the exact length of time is unknown to your petitioner, your petitioner heard a loud report, as if and like the explosion of a cartridge and firearm, and saw the said Martin R. Connelly fall to the cement floor towards your

petitioner near said table within the said Pier 8 enclosure, near said pass-gate, and [37] passenger exit on said Pier 8, as made and provided and duly allotted to the customs service by the rules and regulations of the Bureau of Customs, Treasury Department, United States of America; further, that all of the aforesaid took place at said time and place, while your petitioner was in actual performance of his official duties as customs guard and on account of the performance of said official duties, and within the scope of his employment and under color of his office, in the protection of the United States Revenue, and in the enforcing and protection of the laws and rules and regulations as made and provided and as herein mentioned and alleged, all without fault, or carelessness on the part of your petitioner, and without malice and without unlawful intent upon the part of your petitioner.

XIII.

That your petitioner has made an intensive search and investigation of, and concerning, the said Martin R. Connelly, and upon information and belief, has learned and verily believes, and upon said information and belief, alleges the facts to be, that said Martin R. Connelly was a young adult male of about 25 years of age, of an athletic stature and great muscular physique and capable of inflicting powerful and terrific blows in the exercise of great feats of strength: further, that he was possessed of a quick, violent state of mind, and a ferocious tem-

per and quarrelsome disposition; that at all times herein mentioned, the said Martin R. Connelly was fully aware and had actual knowledge of the premises herein mentioned, and further, that he had actual knowledge, that your petitioner was a duly appointed and legally qualified federal officer, employee, and United States customs guard of the Treasury Department in the performance of his official duties under color of his office, within the scope of his employment, and in the protection of the Revenue of the United States of America and in the prevention of the commission of felonies, in regards to smuggling of goods, wares and merchandise, in regards to the resisting, obstructing and assaulting your petitioner as said federal officer. [38]

XIV.

That your Petitioner further alleges, that at said time and place, and at all times herein mentioned, no murder was committed as alleged in the foresaid indictment, by your petitioner, further, that your petitioner is *no* guilty of any crime alleged in said indictment and not guilty of any crime or offense of any kind whatsoever, against the Territory of Hawaii, but on the other hand your petitioner alleges that the said death occurred on the said date, time and place in the accidental firing of discharging of the said pistol and firearm as aforesaid and in the necessary self defense of your petitioner; further, that all of the acts and conduct of your

petitioner were performed in the official conduct of his official duties, and on account of the performance of his official duties, as herein alleged and under color of office as said federal officer, employee and customs guard, in the protection of the United States Revenue and in the prevention of smuggling of foreign goods, wares and merchandise imported from foreign countries to the Territory of Hawaii, United States of America and in the protection and enforcing of the laws of the United States as made and provided in such cases; further your petitioner was acting and did act lawfully, with the lawful intent and purpose of placing the said Martin R. Connelly under lawful arrest, for the commission of a felony, to wit: for knowingly and forcibly resisting, opposing, impeding, intimidating or interfering with your petitioner, a federal officer, employee, agent or other person in the service of the customs as designated in Section 253 of Title 18, United States Code Annotated, while your petitioner was engaged in the performance of his duties, and/or knowingly and forcibly assaulting and attacking your petitioner on account of the performance of his official duties as herein alleged, all contrary to law and made and provided by Section 254 of Title 18, United States Code Annotated; secondly; your petitioner acted as aforesaid, with the lawful intent and purpose of preventing the said Martin R. Connelly from the commission of a further and another felony, as prohibited by Sections 253-254 of said Title 18, United States

Code Annotated; [39] thirdly; that your petitioner acted aforesaid, because of the unlawful acts, threats and conduct of said Martin R. Connelly as aforesaid, your petitioner was put in fear of bodily harm and his life being in danger, under and upon the premises and allegations as herein alleged, and your petitioner reasonably acted in the necessary preservation of his life, and in his necessary self-defense.

XV.

That petitioner at all times herein mentioned was acting within the scope of his employment in the active performance and discharge of his official duties, as such duly appointed, qualified and acting federal officer, employee and customs guard, as herein mentioned, under color of his office, in the protection and enforcement of the revenue, imports and imposts of the United States of America, and in the protection and enforcement of the Tariff Act and Revenue laws and regulations as made and provided by the United States of America, the Secretary of the Treasury, the Commission of the Bureau of Customs, Treasury Department, his assistants, deputies and duly qualified and appointed officer and agents. That at no time herein mentioned, did your petitioner act outside the scope of his employment or not in the performance nor on account of the performance and discharge of his official duties; neither did your petitioner act outside the color of his office, nor outside the protection and enforcement of the United States Revenue

laws. That all of the acts of your petitioner herein alleged were done in the sincere and honest endeavor and lawful purpose of performing his official duties as aforesaid and without malice, without ill will, and without unlawful intention in all of the premises herein mentioned. That your petitioner after a personal arrest was ordered and made upon said indictment and criminal prosecution, is now out of prison and on bail, upon proper bond and security furnished by him according to law.

[40]

XVI.

That annexed to this petition, and made part of this petition by reference and incorporation, are attached petitioner's Exhibit No. I, consisting of a true copy of the duplicate Oath of Office of your petitioner, duly qualifying him as a federal officer, and Customs Guard, and dated the 26th day of November, 1926 at said City and County of Honolulu as made and provided by the laws of the United States of America. That petitioner's Exhibit II, also hereto attached and by reference incorporated and made a part of this petition, consists of a true copy of the original on file in the office of the United States Customs Service, Port of Honolulu, Territory of Hawaii, dated September 20, 1941, being an official record of the assignment of Sergeants and Guards on station at Platoons No. 1, 2 and 3, on Sunday of September 21st, 1941, wherein your petitioner was duly and lawfully appointed and assigned as such federal officer and customs guard as

herein mentioned on the 3rd watch of said date from 11:00 P.M. to 7:00 A.M. in Main gate, in charge of 3rd watch, S. S. Cleveland, at said place and at Pier 8 in said City and County of Honolulu, Territory of Hawaii, United States of America.

XVII.

That your petitioner makes the allegations in this petition in a candid, specific and positive asseveration as his best knowledge and belief upon the occurrences, acts and events as herein mentioned and upon all the information, knowledge and investigations that he possesses upon the premises as of date wherein this petition is signed; further, your petitioner denies and positively asserts and alleges and negatives the possibility that your petitioner was engaged in other than the official acts, within the scope of his employment and in performance of and on account of the performance of his official duties as often repeated and alleged in this petition.

Wherefore, your petitioner prays that this Amended Petition be permitted to be filed in addition and as supplemental to the original petition as filed and dated October 10th, 1941, and that said Order of Removal and [41] Writ of Habeas Corpus Cum Causa remain and be in full force and effect as of said time, date and place as on file in the official records of the above entitled court and cause.

Dated: Honolulu, Territory of Hawaii, this 15th day of October, 1941.

JOHN KONG YEUNG
Petitioner.

United States of America,
District and Territory of Hawaii—ss.

John Kong Yeung, being first duly sworn, on oath, deposes and says: That he is the Petitioner named herein; that he has read the above and foregoing Amended Petition and knows the contents thereof and that the same is true except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

JOHN KONG YEUNG
Petitioner.

Subscribed and sworn to before me this 15th day of October, 1941.

(Seal) HATTIE PANG LEE
Notary Public, First Judicial Circuit,
Territory of Hawaii.

My Commission expires on June 30, 1945.

I, J. V. Esposito, do certify that I am an Attorney and counselor-at-law of all the courts of the Territory of Hawaii, and of the United States District Court for the Territory of Hawaii, and of the United States Circuit Court of Appeals for the Ninth Circuit; that as counsel for the Petitioner above named, I have examined the proceedings

against him and carefully inquired into all matters set forth in the Amended Petition; and that the same is true to the best of my knowledge, information and belief.

Dated: Honolulu, Territory of Hawaii, this 15th day of October, 1941.

J. V. ESPOSITO

Attorney for Petitioner. [42]

[EXHIBIT 1]

OATH OF OFFICE

(2616, 1757 R. S., and Act of May 13, 1884)

I, John Kong Yeung, having been appointed Customs Guard, \$1500 Honolulu, T. H., Collector of Customs do solemnly swear that I will use my best endeavors to prevent and detect frauds against the laws of the United States imposing duties upon imports.

And I do further swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

JOHN KONG YEUNG

(Sign name in full)

Sworn and subscribed to before me this 26th day of November, A. D. 1926.

(Seal)

R. J. TAYLOR

Assistant Collector

Note.—If the oath is taken before a Notary Public the date of expiration of his commission should be shown.

TAKE NOTICE

Acts of February 8, 1875, and March 2, 1895 (Title 19, U. S. C., 1934 ed., Sec. 27).—"The oaths required to be taken by subordinate officers of the Customs shall be taken in duplicate, one copy to be transmitted to the Secretary of the Treasury (Bureau of Customs), and the other to be filed with the Collector of Customs for the district in which the officer appointed acts. And in default of taking such oath, or transmitting a certificate thereof, or filing the same with the Collector, the party failing shall forfeit and pay the sum of \$200, to be recovered, with cost of suit, in any court of competent jurisdiction, to the use of the United States."

This oath may be administered by a Customs officer or employee authorized to administer oaths under the provisions of Section 486, Tariff Act of 1930. To be prepared in triplicate, two copies to be forwarded to the Commissioner of Customs, as instructed in Articles 1424 and 1426, C. R. 1937.

Note: I certify that *this a* true copy of the duplicate on file in this office.

(Seal)

(Sgd) WARDE C. HIBERLY

Acting Collector of Customs [43]

[EXHIBIT II]

United States Customs Service

DAILY RECORD AND REPORT OF ASSIGNMENT OF INSPECTORS, GUARDS, LABORERS, ETC.

Port of Honolulu, T. H., September 20, 1941

Record and report of assignment of Sergeants and Guards on station at Platoons Nos. 1, 2, and 3, on Sunday, September 21, 1941

Name	Title	Vessel or Location	Pier	Notations (Laborers assisting, etc.)
George Roberts	Inspector	In Charge		
1st Watch from 7:00 A. M. to 3:00 P. M.				
C. DeMello	Sergeant	In charge of 1st Watch		
N. E. Engenan	Guard	SS Raphael Seemee		Guard Ship
E. G. Wing	Inspector	" " & Pres Cleveland		Search Ship
R. Thomas	Guard	" " "		" "
D. Steffen	"	" " "		" "
O. P. Rice	"	" " "		" "
D. Smith	"	" " "		" "
H. Feikert	"			Waterfront patrol
J. R. Wilson	"	Post No. 1, Clipper		Report at 2:00 P. M.
E. T. Oakley	"			Assgd. to Cashiers Off
F. D. Meacham	"			Off Duty
A. T. Graham	"			On 2nd Watch
A. L. Zane	"			" "

Name	Title	Vessel or Location	Pier	Notations (Laborers assisting, etc.)
2nd Watch from 3:00 M. to 11:00 P. M.				
C. K. Lua	Sergeant	In Charge of end Watch		
D. Leahy	Guard			In Office
F. Pennasilico		SS Pres Cleveland	8	Main Gangway
B. Griswold		" "	8	" " Asst.
Geo. Lawelawe		" "	8	Main Gate
H. Higgins		" "	8	" " Asst.
M. A. Gora		" "	8	Crew Gangway
B. P. Harrison		" "	8	" " Asst.
A. L. Zane		" "	8	Lower end of pier
A. T. Graham		SS Raphael Semmes		Guard ship
C. A. Campbell		Post No. 2, Clipper and Waterfront patrol		
3rd Watch from 11:00 P. M. to 7:00 A. M. 9/21/41				
C. F. Larsen	Sergeant	In Charge of 3rd Watch		
M. R. Estrella	Guard	SS Pres Cleveland		Main gate
E. G. Schultz	"			In Office
J. K. Yeung	"	SS Pres Cleveland	8	Main Gangway
J. Freitas	"	" "	8	Crew Gangway
Note: 1st Aid Class Monday, September 22, 1941, at 7:00 A. M.				

Approved:

I certify that this is a true copy of the original on file in this office.

(Sgd) WARDE C. HIBERLY

Acting Collector of Customs

GEORGE ROBERTS

Inspector of Customs.

[Endorsed]: Filed Oct. 15, 1941. [44]

In the United States District Court for the
Territory of Hawaii

Criminal No. 9466

TERRITORY OF HAWAII

vs.

JOHN KONG YEUNG,

Defendant.

VERDICT

We, the Jury, duly empaneled and sworn in the above entitled cause, do hereby find the defendant, John Kong Yeung, guilty of manslaughter.

Dated: Honolulu, T. H., this 28th day of November, 1941.

CYRIL F. DAMON

Foreman of Jury

[Endorsed]: Filed Nov. 28, 1941. [46]

In the United States District Court for the
Territory of Hawaii

Cr. No. 9466

(Murder in the Second Degree).

THE TERRITORY OF HAWAII,

Plaintiff,

vs.

JOHN KONG YEUNG,

Defendant.

JUDGMENT AND COMMITMENT

On this, the 1st day of December, A. D. 1941, came the Public Prosecutor of the City and County of Honolulu, and the above named defendant, John Kong Yeung, appearing in person and by his counsel, J. Garner Anthony, Esq., and J. V. Esposito, Esq., and

The defendant having been heretofore, on, to-wit, the 28th day of November, 1941, convicted upon a verdict rendered by the jury empaneled in this cause of the offense of Manslaughter (Section 5996, Revised Laws of Hawaii, 1935), and included offense in the Indictment returned herein, and the Defendant having been asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

Ordered and adjudged that the Defendant having been found guilty of Manslaughter is hereby adjudged guilty of such offense and committed to imprisonment at hard labor in Oahu Penitentiary for a period not to exceed ten (10) years, minimum sentence to be later fixed in accordance with law.

It is further ordered that Mittimus herein be stayed until two (2) o'clock P.M. on Friday, the 5th day of December, 1941. [48]

It is further ordered that the Clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

INGRAM M. STAINBACK

Judge, United States District
Court for the Territory of
Hawaii.

[Endorsed]: Filed Dec. 1, 1941. [49]

In the United States District Court
for the District of Hawaii

October Term 1941

IN THE MATTER OF THE CONDUCT OF
THE BUSINESSS OF THIS COURT

ORDER

By reason of the existence of international war involving the United States, and of a consummated

invasion attack and threatened further invasion by armed enemy forces upon this Island of Oahu, Territory of Hawaii, and other Pacific Islands which are under the jurisdiction of this Court, and by reason of a proclamation issued on December 7th, 1941, by the Governor of the Territory of Hawaii suspending the privilege of the Writ of Habeas Corpus and placing the said Territory under Martial Law,

It is hereby ordered that all proceedings in all matters and causes now pending before this Court, be and the same are hereby and henceforth continued until the further order of this Court; and

It is further ordered that the time for filing all answers, motions and, or, other pleadings and papers in causes now pending before this Court, be and the same is hereby extended until the further order of this Court.

Dated this 12th day of December, 1941.

D. E. METZGER

Judge,

United States District Court

District of Hawaii

INGRAM M. STAINBACK

Judge,

United States District Court

District of Hawaii

[Endorsed]: Filed Dec. 12, 1941. [50]

In the United States District Court
for the District of Hawaii

October Term 1941

IN THE MATTER OF THE CONDUCT OF
THE BUSINESS OF THIS COURT

ORDER

It is hereby ordered that the Order of December 12, 1941, continuing until further Order all causes and matters then pending, and extending time until further Order for filing answers, motions, and, or, other pleadings and papers in causes then pending, be and the same is set aside and cancelled.

Dated this 10th day of February, 1942.

D. E. METZGER

Judge

INGRAM M. STAINBACK

Judge

[Endorsed]: Filed Feb. 13, 1942. [51]

[Title of District Court and Cause.]

APPEARANCE OF COUNSEL

Come now Cass & Silver and hereby enter their appearance as counsel for the Defendant above named, to wit, John Kong Yeung.

Dated, Honolulu, T. H. January 29, 1942.

CASS & SILVER

By PHILIP SILVER

[Endorsed]: Filed Jan. 31, 1942. [53]

From the Minutes of the United States District
Court for the Territory of Hawaii

Friday, October 10, 1941

[Title of Court and Cause.]

On this day came the petitioner herein with Mr. J. V. Esposito, his counsel, who presented a petition for removal of criminal proceedings entitled "The Territory of Hawaii, vs. John Kong Yeung," together with an order for removal and order of writ of habeas corpus cum causa and a writ of habeas corpus cum causa. The order for removal and order of writ of habeas corpus cum causa were signed, and ordered filed. The Court ordered that the writ of habeas corpus issue.

The order reads as follows:

"In the Matter of the Petition of JOHN KONG YEUNG, for the Removal of the Criminal Prosecution entitled "THE TERRITORY OF HAWAII vs. JOHN KONG YEUNG, Defendant.

ORDER FOR REMOVAL AND ORDER OF
WRIT OF HABEAS CORPUS CUM
CAUSA

"This cause coming on to be heard on the petition of John Kong Yeung defendant in the above entitled suit and cause, for the removal of the said cause from the Circuit Court of the First Judicial Circuit, City and County of Honolulu, Territory of Hawaii, to this court

in the United States District Court for the Territory of Hawaii, it is,

“Ordered that said suit and cause be removed into this court for trial and that a Writ of Habeas Corpus cum causa be issued herein, by the Clerk of this Court, directed to the Circuit Court of the First Judicial Circuit, Territory of Hawaii, its clerk and officers and other custodians of the records of said court, to transmit the records and proceedings in the above entitled cause to this Court on Monday, October 13, 1941, at 10 A.M. and that the Marshal of the United States for the District of the Territory of Hawaii take the body of the defendant, your petitioner, into his custody to be dealt with in the said cause, according to law and the order of this Court.

“Dated: Honolulu, T. H., this 10th day of October, 1941.

(Signed) INGRAM M. STAINBACK,

Judge,

United States District Court,
Territory of Hawaii [54]

From the Minutes of the United States District
Court for the Territory of Hawaii

Monday, October 13, 1941

[Title of Court and Cause.]

On this day came the petitioner herein with Mr. J. V. Esposito, his counsel, and also came Mr.

Charles E. Cassidy, Public Prosecutor, City and County of Honolulu. This case was called for hearing on a motion to quash.

Mr. Cassidy made a statement.

The Court made a statement as to the facts set out in the petition.

Mr. Esposito made a statement and moved to be allowed to file an amendment to the petition.

The Court allowed the petitioner forty-eight hours to file an amended petition. The Court ordered that the amended petition be filed by Wednesday, October 15, 1941 at 10 a.m.

The Court ordered that all motions be heard on Thursday, October 16, 1941 at 10 a.m. [55]

From the Minutes of the United States District
Court for the Territory of Hawaii

Thursday, October 16, 1941

[Title of Court and Cause.]

On this day came the petitioner herein with Mr. J. V. Esposito, his counsel, and also came Mr. Charles E. Cassidy, Public Prosecutor and Mr. W. Z. Fairbanks, Deputy Public Prosecutor, City and County of Honolulu, counsel for the respondent. This case was called for hearing.

Mr. Cassidy stated that he would not file any motion and consented to the trial of this case in this court.

The defendant entered a plea of not guilty as charged in the indictment.

Mr. Cassidy asked that this case be set for trial during the week beginning with October 20, 1941.

Mr. Esposito asked for further time.

The Court ordered that this case be continued to Monday, October 20, 1941 at 9 a.m. Mr. Esposito entered an exception to the setting of the case. [56]

From the Minutes of the United States District
Court for the Territory of Hawaii

Saturday, October 18, 1941

[Title of Court and Cause.]

On this day came the petitioner herein with Mr. J. V. Esposito, his counsel, and also came Mr. Charles E. Cassidy, Public Prosecutor, City and County of Honolulu. This case was called for hearing on a motion for continuance.

Argument was had by respective counsel on said motion.

The Court ordered that this case be continued to Monday, October 27, 1941 at 9 a.m. for trial. [57]

From the Minutes of the United States District
Court for the Territory of Hawaii

Monday, October 27, 1941

[Title of Court and Cause.]

On this day came the applicant herein with Mr. J. V. Esposito, his counsel, and also came Mr. Charles E. Cassidy and Mr. W. Z. Fairbanks, Public Prosecutors, City and County of Honolulu, Territory of Hawaii. Mr. Angus M. Taylor, United States Attorney, appeared and stated that he had been instructed by the Attorney General to appear as special counsel for the purpose of filing a motion for continuance and arguing said motion. This case was called for hearing on a motion for continuance.

Argument was had by Mr. Taylor and Mr. Esposito in support of the motion for continuance.

Argument was had by Mr. Cassidy in opposition to the motion.

Further argument was had by Mr. Taylor.

The witnesses were ordered to leave the court room.

Further argument was had by Mr. Esposito.

Frederick H. Gardner, Supervising Customs Agent, at San Francisco, California, was called and sworn and testified.

Further statements were made by Mr. Cassidy, Mr. Taylor and Mr. Esposito.

The Court ordered that this case be continued to October 30, 1941 at 9 a.m. to be re-set for trial.

From the Minutes of the United States District
Court for the Territory of Hawaii

Thursday, October 30, 1941

[Title of Court and Cause.]

On this day came Mr. Charles E. Cassidy, Public Prosecutor, City and County of Honolulu, and Mr. W. Z. Fairbanks, Deputy Public Prosecutor, and also came Mr. J. V. Esposito, counsel for the defendant and with said defendant. Mr. Angus M. Taylor, Jr., United States Attorney, made a special appearance as special counsel for the defendant on the motion for continuance.

Frederick H. Gardner, Supervising Customs Agent, 14th Customs Division, was called and sworn and testified.

Statements were made by Mr. Taylor, Mr. Cassidy and Mr. Esposito.

The Court ordered that this case be set for trial on Thursday, November 13, 1941 at 9 a.m. Mr. Taylor entered an exception.

The Court ordered that this case be continued to Friday, October 31, 1941 for hearing on the motion to quash venire and motion to transfer cause to the County of Maui, Territory of Hawaii. [59]

From the Minutes of the United States District
Court for the Territory of Hawaii

Friday, October 31, 1941

[Title of Court and Cause.]

On this day came Mr. Charles E. Cassidy, Public Prosecutor, City and County of Honolulu and Mr. W. Z. Fairbanks, Assistant Public Prosecutor, and also came the defendant John Kong Yeung with Mr. J. V. Esposito, his counsel.

This case was called for hearing on a motion to quash *venire* and a motion for removal of cause.

The affidavits of Henry A. Nye and James B. Mann were presented by Mr. Cassidy and ordered filed.

The Honolulu Star-Bulletin for September 22, 24, and 27, 1941, the Honolulu Advertiser for September 23, and 26, 1941, and the Sentinel for September 25, and October 16, 1941, were offered by Mr. Esposito in support of the motion for change of venue, admitted in evidence and ordered filed.

Opening argument was had by Mr. Esposito in support of the motion.

Argument was had by Mr. Fairbanks resisting the motion to quash *venire*.

The motion to quash *venire* was overruled. Mr. Esposito entered an exception.

Argument was had by Mr. Cassidy resisting the motion for change of *venire*.

The Court ordered that this case be continued to 2 p.m. this day for further argument.

At 2:05 p.m. the Sentinel for October 30, 1941 was submitted by Mr. Esposito.

The Honolulu Star Bulletin for September 23, 1941 was submitted by Mr. Cassidy. Said newspapers were admitted in evidence. [60]

Argument was had by Mr. Cassidy.

Argument was had by Mr. Esposito.

The motion for change of venue was denied. Mr. Esposito entered an exception. [61]

From the Minutes of the United States District
Court for the Territory of Hawaii

Thursday, November 13, 1941

[Title of Court and Cause.]

The Court ordered that further proceedings in this matter shall be conducted under the title of "Territory of Hawaii, plaintiff, vs. John Kong Yeung, defendant, Criminal No. 9466 of this court.

Criminal No. 9466

The Territory of Hawaii

vs.

John Kong Yeung

On this day came Charles E. Cassidy, Public Prosecutor and Mr. W. Z. Fairbanks, Deputy Public Prosecutor, Territory of Hawaii, counsel for the plaintiff herein and also came the defendant

herein with Mr. J. V. Esposito, his counsel. Upon motion of Mr. J. Garner Anthony his name was entered of record as special counsel for the defendant. This case was called for trial.

The following jurors were duly empaneled and sworn to try the issues herein: Percy J. Levey, Edward A. Goeas, Matsuo Matsugama, Cyril F. Damon, Orlando A. Schoening, George K. Furuya, Charles T. Littlejohn, Jr., Ralph H. E. Schmidt.

At 11:59 a.m. the Court ordered that this case be continued to 2 p.m. this day.

At 2 p.m. the court reconvened. It was stipulated the jury and all parties were present.

The following jurors were empaneled to try the issues herein: Frank T. Sullivan, Charles W. Weatherwax, Charles B. Cooper, Jr., De Witt McCloskey.

At 3 p.m. the jury was sworn. [62]

From the Minutes of the United States District
Court for the Territory of Hawaii

Friday, November 28, 1941

[Title of Court and Cause.]

On this day came Mr. Charles E. Cassidy, Public Prosecutor, and Mr. W. Z. Fairbanks, Deputy Public Prosecutor, City and County of Honolulu, appearing for the prosecution, and also came Mr. J. G. Anthony, Special Assistant United States

Attorney, and Mr. J. V. Esposito, counsel for the defendant herein and with said defendant. This case was called for argument to the jury.

It was stipulated that the jury heretofore empaneled and sworn to try the issues herein and the defendant were present. All parties being present the further trial of this case proceeded as follows:

At 10:12 a.m. argument was had to the jury by Mr. Cassidy.

At 11:25 a.m. argument was had by Mr. Esposito to the jury.

At 12 noon the Court continued this case to 1:30 p.m. this day.

At 1:36 p.m. Mr. Esposito continued his argument to the jury.

At 2:48 p.m. Mr. Anthony argued to the jury.

At 3:40 p.m. Mr. Fairbanks argued to the jury.

At 4:37 p.m. the Court instructed the jury.

The defense excepted to the Court's giving Territory's requested instructions Nos. 3, 4, 7-g, 11, 7-F and 7-B. The defense entered an exception to the Court's refusal to give the defendant's requested instructions No. 1 and No. 8.

The Court appointed Mr. Cyril F. Damon foreman of the jury. Otto F. Heine, Marshal and T. R. Clark and G. E. Bruns, Deputy Marshals, were sworn to take charge of the jury during its deliberations. At 5:07 p.m. the jury retired in charge of the bailiffs to deliberate upon a verdict. [63]

At 5:24 p.m. it was stipulated by respective counsel and ordered by the Court that the words "this

defendant" on line seven of the Court's instruction No. 22 be stricken and the word "he" inserted after the word "indicate" on line 18 of the same instruction; that the last part of the second paragraph of the Court's Instruction No. 15 following the semicolon be stricken.

At 6:05 p.m. the jury was taken to dinner.

At 7:55 p.m. the jury returned from dinner and retired to deliberate upon a verdict.

At 9:52 p.m. the jury returned the following verdict:

"Verdict

"We, the jury, duly empaneled and sworn in the above entitled cause, do hereby find the defendant, John Kong Yemng, guilty of manslaughter.

"Dated: Honolulu, T. H., this 28th day of November, 1941.

(Signed) CYRIL F. DAMON

Foreman of Jury."

The defense excepted to the verdict as contrary to law, the evidence and the weight of the evidence and gave notice of motion for a new trial.

Upon request of the defense the matter of sentence was continued to Monday, December 1, 1941, at 9 a.m.

The jurors were excused subject to call. [64]

From the Minutes of the United States District
Court for the Territory of Hawaii

Monday, December 1, 1941

[Title of Court and Cause.]

On this day came Mr. C. E. Cassidy, Public Prosecutor and Mr. W. Z. Fairbanks, Deputy Public Prosecutor, City and County of Honolulu, appearing for the prosecution and also came the defendant herein with Mr. J. G. Anthony, Special Assistant to the United States Attorney, and Mr. J. V. Esposito, his counsel. This case was called for sentence.

Upon the verdict of the jury heretofore entered in this case, that the defendant is guilty of manslaughter, the Court adjudged the defendant guilty of manslaughter and ordered that the defendant be confined in Oahu Penitentiary at hard labor for a period not to exceed ten years, minimum sentence to be later fixed in accordance with law.

Mr. Cassidy advised the Court that the defendant had not been asked whether he had anything to say why sentence should not be imposed.

Counsel for the defendant stated that the defendant had nothing to say.

Mr. Esposito and Mr. Anthony entered exceptions to the judgment of the Court and gave notice of appeal.

The Court stated that the matter of bond on appeal would be taken up by agreement of counsel.

The defendant was released in custody of counsel.

Later came Mr. Cassidy and Mr. Esposito with the bondsman herein, Mr. Wm. N. Rosehill.

Mr. Angus M. Taylor, Jr., United States Attorney, was present and was questioned by the Court.

Mr. Rosehill acquiesced in the continuance of the bond and resumed all responsibility and consented to the stay of mittimus. [65]

Mittimus was stayed to Friday, December 5, 1941.

The Judgment of the Court in this case reads as follows:

“JUDGMENT AND COMMITMENT

“On this the 1st day of December, A. D. 1941, came the Public Prosecutor of the City and County of Honolulu, and the above named defendant John Kong Yeung, appearing in person and by his counsel, J. Garner Anthony, Esq., and J. V. Esposito, Esq., and

“The defendant having been heretofore, on, to-wit, the 28th day of November, 1941, convicted upon a verdict rendered by the jury empaneled in this cause of the offense of Manslaughter (Section 5996, Revised Laws of Hawaii, 1935), and included offense in the Indictment returned herein, and the Defendant having been asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, it is by the Court

“Ordered and adjudged that the Defendant having been found guilty of Manslaughter is hereby adjudged guilty of such offense and committed to imprisonment at hard labor in Oahu Penitentiary for a period not to exceed ten (10) years, minimum sentence to be later fixed in accordance with law.

“It Is Further Ordered that Mittimus herein be stayed until two (2) o’clock P. M. on Friday, the 5th day of December, 1941.

“It is further ordered that the Clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) INGRAM M. STAINBACK,
Judge,

United States District Court
for the Territory of Hawaii.”

[66]

From the Minutes of the United States District
Court for the Territory of Hawaii

Friday, December 5, 1941

[Title of Court and Cause.]

On this day came Mr. Charles E. Cassidy, Public Prosecutor, City and County of Honolulu, appearing for the prosecution and also came the defendant with Mr. J. G. Anthony, Special Assistant United

States Attorney, and Mr. J. V. Esposito, his counsel.

This case was called for hearing on a motion to set bond on appeal.

The Court ordered that this case be continued to Monday, December 8, 1941 at 2 p.m. for hearing on the motion to set bond. [67]

From the Minutes of the United States District
Court for the Territory of Hawaii

Monday, December 8, 1941

[Title of Court and Cause.]

On this day came Mr. W. Z. Fairbanks, Deputy Public Prosecutor, City and County of Honolulu, appearing on behalf of the prosecution, and also came the defendant with Mr. J. G. Antholmy, Assistant United States Attorney, his counsel. This case was called for hearing on a motion to set bond on appeal.

The Court denied the defendant's bond on appeal. The defendant was ordered committed.

Mr. Anthony entered an exception to the Court's ruling.

Mr. Anthony advised the Court that this defendant does elect to commence sentence and proceed with his appeal. [68]

From the Minutes of the United States District
Court for the Territory of Hawaii

Saturday, January 3, 1942

[Title of Court and Cause.]

ORDER FIXING TIME FOR SETTling
BILL OF EXCEPTIONS

“Pursuant to Rule IX, Criminal Rules, it is hereby ordered that the time for the settlement of appellant’s Bill of Exceptions is hereby extended until February 3rd, 1942.

“Dated: Honolulu, Hawaii, January 3rd, 1942.

(Signed) INGRAM M. STAINBACK

United States District Judge.”

[69]

From the Minutes of the United States District
Court for the Territory of Hawaii

Friday, January 30, 1942

[Title of Court and Cause.]

ORDER FIXING TIME FOR SETTling
BILL OF EXCEPTIONS

“Pursuant to Rule IX, Criminal Rules, it is hereby ordered that the time for settlement of appellant’s Bill of Exceptions is hereby extended until March 3, 1942.

“Dated: Honolulu, T. H., January 30th, 1942.

(Signed) INGRAM M. STAINBACK

United States District Judge.”

Consented to:

(s) CHAS. E. CASSIDY

Pub. Pros. C & C of Hon. [70]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

JOHN KONG YEUNG

Leonard Hotel

Honolulu, Hawaii

Names and Addresses of Appellant's Attorneys:

JOSEPH V. ESPOSITO

306 McCandless Bldg.

Honolulu, Hawaii

GARNER ANTHONY

312 Castle & Cooke Bldg.

Honolulu, Hawaii

Offense: Violation of Section 5996, Revised Laws of Hawaii 1935.

Date of Judgment: December 1, 1941.

Brief Description of Judgment or Sentence: Defendant was indicted for the crime of murder in the second degree (Revised Laws of Hawaii 1935, Secs. 5990, 5992), and on November 28, 1941, was

convicted by a jury empaneled in the above cause of the offense of manslaughter (Sec. 5996, Revised Laws of Hawaii 1935), an included offense in the indictment, and sentenced to imprisonment at hard labor in Oahu Penitentiary for a period not to exceed ten (10) years, minimum sentence to be later fixed in accordance with law. The [72] mittimus was stayed until 2:00 P.M. Friday, December 5, 1941, and defendant released in the custody of counsel, his bond being continued in full force and effect with the consent of the surety thereon.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned, on the grounds set forth below.

(s) JOHN KONG YEUNG

Appellant

Dated: Honolulu, Hawaii, December 5, 1941.

Grounds of Appeal:

1. That the verdict and judgment are not sustained by substantial evidence;
2. That the verdict and judgment are contrary to law;
3. Error in denying defendant's motion to quash the venire of jurors summoned to try the above cause;
4. Error in refusing to grant defendant's motion for a change of venue;
5. Error in the admission and exclusion of evi-

dence, which errors will be specified in the bill of exceptions, and include, among others: The admission of Plaintiff's Exhibits B-1, 2 and 3, H-1 to H-6 inclusive, I, J-1, 2 and 3;

6. Error in commenting on the evidence while the trial was in progress, which errors will be specified in the bill of exceptions, and, among others, prejudicial comment on the testimony of July Ah Kim Yam;

7. Error in permitting counsel for the prosecution to compel defendant to demonstrate with the lethal weapon (Plaintiff's Exhibit E) before the jury, the act of firing at target practice; [73]

8. Error in failing to charge the jury that under the indictment the jury could return a verdict finding defendant guilty of assault and battery;

9. Error in the charge to the jury giving prosecution's requested instructions Nos. 3, 4, 7-B, 7-F, and 11, and in failing to give defendant's instruction No. 1;

10. Error in refusing to correct a misstatement of the evidence made by the prosecutor, Chas. E. Cassidy, in argument to the jury, to the effect that defendant had testified he was in a coma immediately after he was first struck by the deceased;

11. Error in rebuking counsel for defendant, J. V. Esposito, and ordering him to sit down while making an objection to a misstatement of the evidence by the prosecutor Cassidy in his argument to the jury, and in finding defendant's counsel

guilty of contempt of court in the presence of the jury;

12. The court erred in failing to grant defendant's motions for mistrials made during the course of the trial, which motions will be specified in the bill of exceptions.

Dated: Honolulu, Hawaii, December 5, 1941.

(s) **JOHN KONG YEUNG**

Defendant-Appellant

Receipt of a copy of the foregoing notice of appeal is hereby acknowledged this 5th day of December, 1941.

(s) **CHAS. E. CASSIDY**

Prosecutor, City and County of Honolulu

[Endorsed]: Filed Dec. 5, 1941. [74]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes now John Kong Yeung, the above named Defendant in the above entitled action, and says that in the indictment, trial, record, proceedings, verdict, judgment and commitment, rulings and orders, all in the United States District Court for the Territory of Hawaii in a criminal action lately pending in said United States District Court for the Territory of Hawaii, wherein the Territory of

Hawaii was and is Plaintiff and John K. Yeung was and is Defendant, there was manifest, material and prejudicial error, wherefore Defendant herein now makes, files and presents the following assignment of errors, to wit,

Assignment of Error No. I.

The United States District Court for the Territory of Hawaii erred in assuming jurisdiction of this cause for the reason that it had no jurisdiction over the Defendant.

Assignment of Error No. II.

The United States District Court for the Territory of Hawaii erred in assuming jurisdiction of this cause for the reason that it had no jurisdiction over the subject matter of the action.

Assignment of Error No. III.

The United States District Court for the Territory of Hawaii erred in assuming jurisdiction of this action for the reason that it is based upon an indictment returned by the Grand Jury of the First [76] Judicial Circuit, Territory of Hawaii and the said Court was without jurisdiction to try said indictment.

Assignment of Error No. IV.

The United States District Court for the Territory of Hawaii erred in assuming jurisdiction over

this cause for the reason that it was not removable to said Court from the Circuit Court of the First Judicial Circuit, Territory of Hawaii, which is a Territorial court, under any rules or statutes of the United States made and provided therefor.

Assignment of Error No. V.

The United States District Court for the Territory of Hawaii erred in assuming jurisdiction over this cause for the reason that it involves an offense under the laws of the Territory of Hawaii which is not cognizable by the said Court.

Assignment of Error No. VI.

The United States District Court for the Territory of Hawaii was without jurisdiction to try the offense of murder in the second degree or any included offense under the laws of the Territory of Hawaii as set forth in the indictment herein.

Assignment of Error No. VII.

The United States District Court for the Territory of Hawaii is not a constitutional court of the United States and therefore there was no **right of** removal from the Circuit Court of the First Judicial Circuit, Territory of Hawaii to said Court.

Assignment of Error No. VIII.

The United States District Court for the Territory of Hawaii was without jurisdiction to enter a judgment and commitment in this cause.

Assignment of Error No. IX:

The United States District Court for the Territory of Hawaii had no original jurisdiction over this cause and the said cause was therefore not removable to said Court. [77]

Wherefore said Defendant prays that the Judgment and Commitment of the said United States District Court for the Territory of Hawaii in said action heretofore entered against him on December 5, 1941 be reversed and set aside and that the case be remanded to said United States District Court for the Territory of Hawaii with instructions to return the same to the Circuit Court of the First Judicial Circuit, Territory of Hawaii.

Dated, Honolulu, T. H. February 26, 1942.

JOHN KONG YEUNG

Defendant

By CASS & SILVER

Attorneys

By PHILIP SILVER

Service of the foregoing Assignment of Errors is hereby admitted this 26th day of February, 1942.

THE TERRITORY OF HAWAII

Plaintiff

By CHAS. E. CASSIDY

Public Prosecutor, City and
County of Honolulu, Territory
of Hawaii.

[Endorsed]: Filed Feb. 26, 1942. [78]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the United States District Court
for the Territory of Hawaii:

Pursuant to the appeal in the above entitled cause, you are hereby requested to transmit to the Ninth Circuit Court of Appeals the record in the above entitled cause, including the documents hereinafter referred to:

1. Clerk's minutes, First Judicial Circuit, Territory of Hawaii.
2. Bond.
3. Indictment of the Territorial Grand Jury.
4. Petition for Removal of Cause.
5. Order for Removal and Order of Writ of Habeas Corpus Cum Causa.
6. Writ of Habeas Corpus Cum Causa.
7. Motion to Quash.
8. Amended Petition for Removal of Cause.
9. Verdict.
10. Judgment and Commitment.
11. General Order of the United States District Court for the Territory of Hawaii dated December 12, 1941.
12. General Order of the United States District Court for the Territory of Hawaii dated February 10, 1942.

13. Appearance of Counsel.
14. Clerk's minutes, United States District Court for the Territory of Hawaii.
15. Designation of Record on Appeal.
16. Assignment of Errors. [80]
17. Order to Clerk.

Dated, Honolulu, T. H. February 26, 1942.

JOHN KONG YEUNG,
Defendant

By CASS & SILVER,
Attorneys

By PHILIP SILVER

Copy received February 26, 1942.

CHAS. E. CASSIDY

Pub. Pro. C & C of Hon.

[Endorsed]: Filed Feb. 26, 1942. [81]

[Title of District Court and Cause.]

ORDER

The above named Defendant having filed his "Assignment of Errors", pursuant to Rule 8 of the "Rules of Criminal Procedure After Plea of Guilty, Verdict or Finding of Guilt," and his "Designation of Record on Appeal" herein, the Chief Clerk of this Court is hereby ordered to forward promptly, with his certificate, to the Ninth

Circuit Court of Appeals the above mentioned record and Assignment of Errors.

Dated, Honolulu, T. H. February 27, 1942.

INGRAM M. STAINBACK

Judge of the above entitled
Court.

Approved to form.

CHAS. E. CASSIDY

Pub. Pro. C & C of Hon.

[Endorsed]: Filed Mar. 2, 1942. [83]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
ON APPEAL

United States of America,
Territory of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify that the foregoing pages numbered from 1 to 83 inclusive are a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office, and that the costs of the foregoing transcript of record are \$10.95 and that said amount has been paid to me by the appellants.

In testimony whereof, I have hereto set my hand and affixed the seal of said court this 9th day of March, A. D. 1942.

(Seal)

WM. F. THOMPSON, JR.,
Clerk, U. S. District Court,
Territory of Hawaii. [84]

[Endorsed]: No. 10065. United States Circuit Court of Appeals for the Ninth Circuit. John Kong Yeung, Appellant, vs. Territory of Hawaii, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Hawaii.

Filed March 14, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10065

TERRITORY OF HAWAII,

Appellee,

vs.

JOHN KONG YEUNG,

Appellant.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON THIS
APPEAL AND DESIGNATION OF PARTS
OF RECORD NECESSARY FOR THE CON-
SIDERATION THEREOF

Comes now John Kong Yeung, the above named Appellant, by his counsel, Cass & Silver, and respectfully states that on his appeal in this Court he will rely on the point that the United States District Court for the Territory of Hawaii was wholly without jurisdiction to try the indictment herein; that the "Assignment of Errors" is directed exclusively to this point; and that the following parts of the record are necessary for the consideration thereof.

1. Clerk's minutes of the Circuit Court, First Judicial Circuit, Territory of Hawaii.

2. Indictment for Murder in the Second Degree.

3. Petition for Removal of Cause.

4. Order for Removal and Order of Writ of Habeas Corpus Cum Causa.

5. Writ of Habeas Corpus Cum Causa.

6. Motion to Quash.

7. Amended Petition for Removal of Cause, Exhibit I, Exhibit II.

8. Verdict.

9. Judgment and Commitment.

10. Notice of Appeal.

11. Order of the United States District Court for the Territory of Hawaii dated December 12, 1941.

12. Order of the United States District Court for the Territory of Hawaii dated February 10, 1942.

13. Appearance of Counsel.

14. Clerk's Minutes.

15. Designation of Record on Appeal.

16. Assignment of Errors.

17. Order.

Dated, Honolulu, T. H. March 9, 1942.

JOHN KONG YEUNG,

Appellant

By CASS & SILVER,

Attorneys

By PHILIP SILVER

Receipt of a copy of the within "Statement of Points on Which Appellant Intends to Rely on this Appeal and Designation of Parts of Record Nec-

sary for the Consideration Thereof'' is hereby acknowledged this 9th day of March, 1942.

CHAS. E. CASSIDY

Public Prosecutor, City and
County of Honolulu.

[Endorsed]: Filed Mar. 14, 1942. Paul P.
O'Brien, Clerk.